IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.4416 OF 2007
IN
SUIT NO.3218 OF 2007

Mohan Fab Tex Limited ..Plaintiff.
Vs.
Asset Reconstruction Company (India) Limited and another ..Defendants.

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Mr. Virag Tulzapurkar, Senior Advocate with Mr. Firdosh Puniwala, Mr. Sajid Suvarna and Mr. Ricab Chand i/b M/s. DSK Legal for the Plaintiff.
Ms. Rajni Iyer, Senior Advocate with Mr. A. Patil and Mr. M.F. Sayed i/b M.K. Ambalal & Co. for the Defendants.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

7th December, 2007.

P.C. :

1. The Suit is for a declaration that there is no valid or concluded contract between the Plaintiff and the First Defendant pursuant to an invitation for sale dated 26th April, 2007 and a corrigendum dated 18th May, 2007. The predecessor of the First Defendant lent and advanced monies to the Second Defendant. Upon a default by the Second Defendant, the secured assets

which consisted of movable and immovable property were put up for sale. The First Defendant issued an invitation to offer followed by a corrigendum and the Plaintiff submitted its offer. The initial offer by the Plaintiff on 12th June, 2007 was in the amount of Rs.12 Crores while the revised offer on 20th June, 2007 was in the amount of Rs.16.50 Crores. On 13th August, 2007 the Plaintiff withdrew its revised offer and sought a decision from the First Defendant on whether it was willing to abide by the initial offer submitted by the Plaintiff. The First Defendant has proceeded to forfeit the earnest money deposit of Rs.1.20 Crores furnished by the Plaintiff.

2. The relief that has been sought in the Notice of Motion is that (i) the First Defendant be restrained from conducting a resale of the secured asset until the earnest money deposit of Rs.1.20 Crores is refunded to the Plaintiff; (ii) that in the event that the First Defendant is allowed to conduct a resale, the Plaintiff may be permitted to participate in the bidding process and the amount deposited by the Plaintiff be appropriated towards the earnest

money deposit/ consideration towards purchase of the secured assets; (iii) in the event of a resale and the Plaintiff not being the highest bidder, then a part of the consideration amounting to the Plaintiff's claim be deposited in this Court by the First Defendant; (iv) the Court Receiver be appointed as Receiver of the amount of Rs.1.20 Crores; (v) the First Defendant be directed to deposit an amount of Rs.1.20 Crores in this Court and (vi) the First Defendant be injuncted from forfeiting, appropriating or adjusting any amount towards the expenses of the sale.

3. The main prayer viz. prayer clause (a) which seeks an order of restraint from the First Defendant conducting a resale cannot be granted. Even according to the Plaintiff there is no valid or concluded agreement between the Plaintiff. That being the case of the Plaintiff itself, the First Defendant cannot be restrained from conducting a resale. During the course of hearing of the Notice of Motion, counsel appearing for the Plaintiff had submitted that the Plaintiff may be allowed to bid at the resale and in the event that the Plaintiff does so, the earnest money deposit be appropriated

towards the earnest money / consideration towards the purchase of the secured assets in the event that the bid of the Plaintiff is the highest. The First Defendant has no objection to the Plaintiff participating in the process of the resale as there cannot be. However, the First Defendant is not willing to allow the Plaintiff to utilize the earnest money deposit of Rs.1.20 Crores towards the earnest money that is liable to be deposited in the course of the resale. However, it has been stated on behalf of the First Defendant that in the event that the Plaintiff is declared to be the successful bidder and the bid of the Plaintiff is accepted, then and only in that event the deposit of Rs.1.20 Crores which was furnished by the Plaintiff earlier shall be adjusted towards the total consideration payable by the Plaintiff to the First Defendant, after deducting the costs, charges and expenses, if any, of the resale. The statement of the First Defendant is accepted. The other reliefs cannot be granted at the interlocutory stage. In the circumstances, the Notice of Motion is disposed of with the following directions :

i) The Plaintiff would be at liberty to participate in the

resale of the property which is being conducted by the First Defendant;

ii) In the event that the bid submitted by the Plaintiff is accepted by the First Defendant, then in that event the earnest money of Rs.1.20 Crores that has already been furnished by the Plaintiff in pursuance of the earlier sale shall be adjusted towards the total consideration payable in respect of the successful bid after deducting the costs, charges and expenses of the resale. The deduction, if any, shall, however, be subject to the result of the suit.

iii) In the event that the Plaintiff is not the successful bidder, the forfeiture of the amount of Rs.1.20 Crores furnished by the Plaintiff to the Defendant in pursuance of the earlier sale shall abide by such directions as may be passed by the Court including in regard to the payment of interest at such rate in the event that such a direction is issued by the Court.

It is also understood and agreed between the learned

counsel that in the event that the Plaintiff submits a fresh bid, the earnest money that is liable to be furnished by the Plaintiff in connection with the fresh bid shall not be withheld for reasons related to the first sale.

The Notice of Motion is accordingly disposed of.